

REMARKS/ARGUMENTS

The Restriction Requirement

The Office has set forth a restriction requirement between the following groups of claims:

- (I) claims 1, 3, 4, 8-10, 15-18, 33, and 38-41 (drawn to a woven or knit fabric comprising an air-jet interlaced spun yarn); and
- (II) claims 2, 5-7, 11-14, 19-32, 34-37, and 42 (drawn to a method of preparing a woven or knit fabric comprising an air-jet interlaced spun yarn).

Applicants' Election

Applicants elect, with traverse, the claims of Group I (i.e., claims 1, 3, 4, 8-10, 15-18, 33, and 38-41). Reconsideration of the requirement for restriction is respectfully requested.

Discussion of the Restriction Requirement

Groups I and II allegedly are unrelated because the claims are drawn to a product (Group I) and a method of preparing a product (Group II). According to the Office, distinctiveness can be shown for claims with this type of relationship if the method can be practiced with a materially different product or the product can be used in a materially different process. Applicants respectfully submit that the restriction requirement is improper with respect to Groups I and II for the reasons set forth herein and, therefore, request withdrawal of the restriction requirement.

The Manual of Patent Examining Procedure (M.P.E.P.) recites the requirements for a proper restriction requirement. In particular, the M.P.E.P. states:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) The inventions must be independent (see MPEP Section 802.01, Section 806.04, Section 808.01) or distinct as claimed (see MPEP Section 806.05 - Section 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is required (see MPEP Section 803.02, Section 806.04(a) - Section 806.04(i), Section 808.01(a), and Section 808.02).

(M.P.E.P. § 803 (emphasis added)). These are two separate criteria that must be satisfied to support a proper restriction requirement. The fact that *both* criteria must be satisfied is made all the more clear by the following statement in the M.P.E.P.:

If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.

(M.P.E.P. § 803 (emphasis added)). Thus, if the subject matter of the pending claims is such that there would be no serious burden on the Examiner to search and examine all of the pending claims at the same time, the Examiner is to do so, *even if* the pending claims are drawn to independent or distinct inventions.

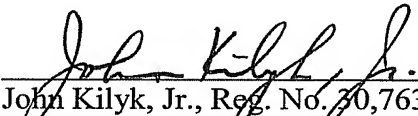
Applicants respectfully submit that the restriction requirement as between the claims of Groups I and II should be withdrawn because of the common woven or knit fabric recited in the claims of both groups. In particular, the claims of Group I (claims 1, 3, 4, 8-10, 15-18, 33, and 38-41) are directed to a woven or knit fabric. The claims of Group II (2, 5-7, 11-14, 19-32, 34-37, and 42) are directed to a method of preparing a woven or knit fabric that includes the woven or knit fabric of Group I. As such, any search and consideration of the claimed subject matter of Group I will necessarily overlap the search and consideration of the claimed subject matter of Group II.

Thus, it is submitted that there is sufficient similarity between the claims of Groups I and II to allow for the search and examination of the subject matter of all of the pending claims at the same time without a “serious burden” being placed on the Examiner. Applicants, therefore, respectfully request withdrawal of the restriction requirement between the two groups and examination of the claims of Groups I and II together. If, however, the restriction requirement is not withdrawn, Applicants request that the claims of Group II (claims 2, 5-7, 11-14, 19-32, 34-37, and 42) be rejoined for examination upon an indication of allowable subject matter and to the extent the claims of Group II are dependent on, or otherwise recite all the limitations of, an allowed claim of elected Group I.

Conclusion

For the foregoing reasons, Applicants respectfully request the withdrawal of the restriction requirement between the subject matter of Groups I and II and examination of all the pending claims at this time. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,



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